ABDUL RAHMAN BIN SAHIR & ANOR.

v.

PUBLIC PROSECUTOR

HIGH COURT MALAYA, KUALA LUMPUR
DATO' SYED AHMAD IDID J.
[CRIMINAL APPEALS NO. 42 - 41 & 42 - 90]
26 OCTOBER 1994

***CRIMINAL LAW**: Corruption - Report made about one month after incident - Whether fatal - Identification parade not held - Whether corroboration needed if complainant is the giver of the bribe - Delay in writing grounds of judgment.*

The appellants were both police constables. On 14 February 1988 they stopped a van which had no haulage permit. The driver of the van took them to meet his "towkay", the complainant (PW4). The appellants at first demanded RM300 in return for not detaining the van. After some bargaining the appellants accepted RM140. No summons was issued by the appellants in connection with the alleged offence. PW4 had agreed to make monthly payments of RM60 to the appellants so that his van will not be detained in the future. On 12 March 1988 the 1st appellant went to PW4's shop to receive the agreed monthly sum, whereupon the ACA officers arrested him. The appellants were later charged with two offences each under s. 4(a) Prevention of Corruption Act 1961 (Revised 1971) and were both convicted and sentenced.

The appellants appealed and contended that the Sessions Judge was wrong in his ruling that PW4 was not an accomplice. In any case it was pointed out to the learned Judge that the absence of an identification parade herein, coupled with the one month delay in making the police report, had vitiated the trial.

Held:

[1] The report by PW4 is acceptable as there is no law, except for the 24 hour rule in respect of accident cases, which compels the making of a report within a reasonable time frame. However all reports must be lodged within a reasonable time and in this case PW4's explanation of intervening Chinese New Year period and his having to go to Penang were factors which contributed to the delay in reporting.

[2] The fact that the witness could identify the two accused in Court on reasonable grounds which he explained is sufficient to make a parade unnecessary. The two accused were face-to-face in PW4's shop. The fact that a particular witness has been able to identify the accused at an identification parade is only a circumstance. The substantive evidence of a witness is his statement in Court.

[3] In corruption cases, there is always the giver and the taker. There are different types of givers. In its wisdom, Parliament has seen it fit to enact s. 18 Prevention of Corruption Act 1961 because a giver of bribe is in strict law an accomplice and if corroboration of his evidence is required in any case, it would lead to unjust acquittal of the takers. Independent evidence from outside will be then be required. This may be impossible as corruption is in the main a transaction between the "authority" (i.e. one who has power to issue a licence or to arrest) and the "underdog" (i.e. the other who requires the licence or has transgressed the law).

[4] In this case the question of impression or demeanour of witness does not decide the outcome of the trial. The Sessions Court Judge in her adequately written grounds had dealt

with facts and explained how she decided several issues. There were no contradictions on material points. She had also considered the defence. The prosecution was quite prompt in the trial. It was only writing of the grounds which was delayed. Justice should be swift but that is not to say it should be rushed.

[Appeal dismissed]

Cases referred to:
Nachatar Singh s/o Bhag Singh v. Public Prosecutor [1986] 2 CLJ 452 ***(foll)***
Public Prosecutor v. Mohamed Bin Majid [1977] 1 MLJ 121 ***(dist)***
Public Prosecutor v. Kok Heng & 2 Ors. [1948] 14 MLJ 171 ***(refd)***
Leong Seng v. Req [1956] 22 MLJ 225 ***(refd)***
R v. Turnbull & Ors [1976] 3 All ER 549 ***(refd)***
R v. Cooper [1968] 3 WLR 1225 CA ***(refd)***
Public Prosecutor v. Chiong Cheng Wah [1988] 1 CLJ 534 ***(refd)***
Public Prosecutor v. Sarjeet Singh & Anor [1994] 2 MLJ 290 ***(refd)***
Soosay Dass v. Public Prosecutor [1951] 17 MLJ 57 ***(foll)***
Emperor v. Chatterbhug Sahu ILR. 38 Cal. 96 ***(refd)***
Goh Ah Yew v. Public Prosecutor [1949] 15 MLJ 150 ***(refd)***
Pie Bin Chin v. Public Prosecutor [1985] 1 MLJ 234 ***(refd)***
Karthiyayani & Anor v. Lee Leong Sin & Anor [1975] 1 MLJ 119 FC ***(refd)***
Ng Kok Jooi v. PP [1974] 2 MLJ 150 ***(refd)***
New Tuck Shen v. Public Prosecutor [1982] 1 MLJ 27 ***(refd)***
Ng Kok Lian & Anor v. Public Prosecutor [1983] 2 MLJ 379 FC ***(refd)***
Soosay Dass v. Public Prosecutor [1951] 17 MLJ 57 ***(refd)***
Daimon Bin Banda v. Public Prosecutor [1951] 17 MLJ 11 ***(refd)***
Tay Choon Nam & 2 Ors v. Rex [1949] MLJ 157 ***(refd)***
Iian Teck Chew v. Regina [1955] MLJ 28 ***(refd)***
Wong Kok Wah v. Public Prosecutor [1955] MLJ 46 ***(refd)***
R v. Baskerville [1916] All ER 38 ***(refd)***
Rattan Singh v. Public Prosecutor [1971] 1 MLJ 162 ***(refd)***
Datuk Chang Hwee Min & Nasrah v. Public Prosecutor ***(refd)***
Ng Kok Lian & Anor v. Public Prosecutor [1983] 2 MLJ 379 FC ***(not foll)***
T.N. Nathan v. Public Prosecutor [1978] 1 MLJ 134 ***(refd)***
Tengku Mahmood v. Public Prosecutor [1974] MLJ 110 ***(refd)***
Vijaya Ratnam v. Public Prosecutor [1962] 28 MLJ 106 ***(refd)***
Chia Han Kiat v. Rex [1937] MLJ 248 ***(refd)***
Samuel T. Ponampalam v. Public Prosecutor [1985] 2 CLJ 86 ***(refd)***
Tan Hun Wah v. Public Prosecutor & Anor (1994) 2 CLJ 180 ***(refd)***
Allen v. Sir Alfred Mcalpine & Sons Ltd. [1968] 2 QB 229 ***(refd)***
Assunta Hospital v. Dr. A. Dutt [1981] 1 MLJ 115 ***(refd)***
Public Prosecutor v. Gurbachan Singh [1964] 30 MLJ 141 ***(refd)***
New Tuck Shen v. Public Prosecutor [1982] 1 MLJ 27 ***(refd)***
*Balakrishnan v. Public Prosecutor [1969] 2 MLJ 61****(refd)***
Mahesan v. Public Proecutor [1970] 1 MLJ 255 ***(refd)***
Mohamed Mokhtar v. Public Prosecutor [1972] 1 MLJ 122 ***(refd)***
Mohamed Taufik v. Public Prosecutor [1975] 1 MLJ 36 ***(refd)***
Reg v. WN. Hammar [1958] MLJ 4 ***(refd)***
Yoh Meng Heng v. Public Prosecutor [1970] 1 MLJ 14 ***(refd)***

Legislation referred to:
Corruption Ordinance 1950, s. 13(3)
Criminal Procedure Code, s. 316(b)
Dangerous Drugs Act, ss. 6, 39B
Evidence Act, s. 114(b)
Prevention of Corruption Act 1961, s. 4(a)

Other sources referred to:
"Identification - unsafe verdict" 1989 (1) MLJ viii
Sarkar on Evidence, 11th Edn. p. 89
Law of Evidence, [1968] 12th Ed. by Woodroff & Ameer Ali.

For the public prosecutor - Ahmad Rosli bin Mohd. Sham, DPP, (DPPs Masri bin Mohd. Daud, Zainal Adzam bin Abdul Ghani with him)
For the 1st accused - T. Kuhanandan
For the 2nd accused - B. Inderjit Singh

JUDGMENT

Syed Ahmad Idid J:
The two accused policemen were charged under s. 4(a) of the Prevention of Corruption Act 1961 (Revised 1971) for having received RM140 from Lim Joo Heng (PW4) to refrain from taking action against him where a van had no haulage permit. The offence was said to have been committed on 14 February 1988.

They also faced a second charge under the same section of the Act for corruptly accepting RM60 cash as inducement not to "harass a van" on 12 March 1988 at the same Syarikat Perniagaan Jaya in Overseas Union Garden.

The 1st accused (Abdul Rahman) was convicted on both charges and sentenced to 6 months and one year's imprisonment respectively to be followed by one year's police supervision to run concurrently.

The 2nd accused (Ismail) was convicted on the 1st charge and sentenced to 6 months imprisonment. He was acquitted and discharged of the second charge.

Both appealed against their conviction. It is to be noted at this juncture that the Public Prosecutor has not appealed against the acquittal of 2nd accused on the 2nd charge. On Mr. Sidney Augustin's application I hereby affirm discharge and acquittal of 2nd accused on the 2nd charge.

The facts of this case are that:

(a) both accused were constables then working for Balai Polis Petaling at Jalan Klang Lama. Their beat duty was Zone E which included Overseas Union Garden wherein a retail shop, Syarikat Perniagaan Jaya, was situated.

(b) PW4 was a proprietor of the Syarikat. His two employees, one driving van BCE 6501, were stopped as the van had no haulage permit, while they were on their way to sell and deliver rice.

(c) The two employees took both accused to the Syarikat to meet their "towkay" PW4. The two accused went into PW4's office within the shop.

(d) The accused at first demanded for RM300 in return for not detaining the van. PW4 told them he did not have the amount and after "perbincangan demi perbincangan" (said in evidence) or "tawar menawar" (used in his report to ACA). PW4 implicated both accused 1 (as the person who asked for the RM140) and accused 2 (for asking him to physically hand the money to accused 1). Both accused then left the shop. They returned the identity cards and driving licence to the two employees.

(e) No summons was issued by the accused in connection with the alleged offence.

(f) PW4 had agreed to make monthly payments of RM60 "supaya beliau (the police) tidak buat kacau terhadap van saya". The discussion took place for some good "20 minutes". PW3 testified that the accused were in the office for about "half an hour".

(g) Then on 12 March 1988, accused 1 went to the shop to receive the agreed monthly sum whereupon the ACA officers arrested him.

(h) PW4 only lodged a police report on 10 March 1988 after he paid RM140 to the accused on 14 February 1988.

The trial commenced on 23 May 1989 and concluded on 5 October 1990.

The Report

From the outset, it must be said that the report by PW4 is acceptable as there is no law, except for the 24 hour rule in respect of accident cases, which compels the making of a report within a time frame. However all reports must be lodged within a reasonable time and in this case PW4's explanation of the intervening Chinese New Year period and his having to go to Penang were factors which contributed to the delay in reporting. *Nachatar Singh s/o Bhag Singh v. Public Prosecutor* [1986] 2 CLJ 452.

Identification Parade

Was the absence of an identification parade fatal? *Public Prosecutor v. Mohamed Bin Majid* [1977] 1 MLJ 121 is not applicable as there the identification parade was unfair to the accused. The fact that the witness could identify the two accused in Court on reasonable grounds which he explained is sufficient to make a parade unnecessary. I have accepted, in this connection, that PM4 could not identify the ACA officer who briefed him "kerana terdapat ramai sangat pegawai-pegawai" whereas the two accused were face-to-face in his shop.

I had considered *Public Prosecutor v. Kok Heng* & 2 Ors. [1948] 14 MLJ 171, and *Leong Seng v. Rex* [1956] 22 MLJ 225, and *R v. Turnbull & Ors* [1976] 3 All ER 549 and on the facts before me, I can conclude that the identification of the two accused was satisfactory. See *R v. Cooper* [1968] 3 WLR 1225 CA and "**Identification - unsafe verdic**t" in [1969] 1 MLJ viii. Even in *Public Prosecutor v. Chiong Cheng Wah* [1988] 1 CLJ 534, it was observed that the main issue at the trial was whether the accused had been correctly identified. The victim stated that she was able to identify him because at the time of the incident she could clearly see his face.

The fact that a particular witness has been able to identify the accused at an identification parade is only a circumstance. **Law of Evidence** [1968] 12th Edition: Woodroff & Ameer Ali. The substantive evidence of a witness is his statement in Court. **Sarkar on Evidence** 11th Edition page 89.

It was said in *Public Prosecutor v. Sarjeet Singh & Anor* [1994] 2 MLJ 290 that "... the lack of an identification parade ... may not vitiate the trial ..."

Accomplice and Corroboration

Mr. Inderjit Singh did not specifically raise this matter in the petition but only did so when he submitted in Court (see paper tendered as "A"). On the other hand Mr. T. Kuhanandan submitted that the Sessions Court Judge erred when she acknowledged PW4 was not an accomplice and added that the conviction was on uncorroborated evidence.

It was further strenuously contended that PW4 who handed the RM140 and RM60 was an accomplice because he had taken an active role in negotiating to reduce the bribe. I am unable

to accept this proposition because PW4 was under pressure to pay. See *Soosay Dass v. Public Prosecutor* [1951] 17 MLJ 57.

I am of the opinion that there are degrees of complicity and such status must always be considered in deciding whether or not corroboration can be dispensed with. In *Emperor v. Chatterbhug Sahu* ILR. 38 Cal. 96 Doss J said:

> If the witness has made himself an agent for the prosecution before associating himself with the wrong doers or before the actual perpetration of the offence, he is not an accomplice; but he may be an accomplice if he extends no aid to the prosecution until after the offence has been committed.

Goh Ah Yew v. Public Prosecutor [1949] 15 MLJ 150 provided a meaning of accomplice but the picture cannot fit PW4 here. See also *Pie Bin Chin v. Public Prosecutor* [1985] 1 MLJ 234. While it is settled law that a person cannot corroborate himself,the nature and extent of corroboration necessary must depend on and vary according to the particular circumstances of each case. *Karthiyayani & Anor v. Lee Leong Sin & Anor* [1975] 1 MLJ 119 FC.

In any case even where a witness is an accomplice only by reason of making a corrupt payment he is not presumed to be unworthy of credit.

In a corruption case, there is always the giver and the taker (*Ng Kok Jooi v. PP* [1974] 2 MLJ 150). There are different types of givers: *New Tuck Shen v. Public Prosecutor* [1982] 1 MLJ 27. In its wisdom, Parliament has seen it fit to enact s. 18 Prevention of Corruption Act 1961 because a giver of a bribe is in strict law an accomplice and if corroboration of his evidence is required in any case, it would lead to unjust acquittal of the takers. *Ng Kok Lian & Anor v. Public Prosecutor* [1983] 2 MLJ 379 FC. Independent evidence from outside will then be required. This may be impossible as corruption is in the main a transaction between the "authority" (i.e. one who has power to issue a licence or to arrest) and the "underdog" (i.e. the other who requires the licence or has transgressed the law).

In *Soosay Dass v. Public Prosecutor*[1951] 17 MLJ 57, the case was not proved beyond reasonable doubt as the sole question was whether the accused took part in the crime. *Daimon Bin Banda v. Public Prosecutor* [1951] 17 MLJ 11, held that if it appeared that a man had made a payment and therefore may be within the exception of s. 13(3) Corruption Ordinance 1950 then, it was necessary to scrutinise his evidence very carefully.

Mr. Foster-Sutton was the Attorney-General at the time s. 13(3) was passed but when he became the Chief Justice he agreed with Taylor J who had decided *Daimon Bin Banda v. Public Prosecutor* [1951] MLJ 11, [1953] MLJ 23. He said:

> We agree with Taylor, J. that the effect of the new provision is that, in corruption cases, a person is no longer to be presumed unworthy of credit merely by reason of the fact that he has made, or caused to have made, an improper payment.
>
> If, however, he has taken some more infamous part in the transaction, for example actively corrupted the public officer into accepting the bribe, the new provision does not cover his testimony.

Section 13(3) of the 1950 Ordinance became s. 18 of the present Act. See *Tay Choon Nam & 2 Ors v. Rex* [1949] MLJ 157. Compare with *Iian Teck Chew v. Regina* [1955] MLJ 28.

The evidence of an accomplice requires corroboration in material particulars implicating the accused. See s. 114(b) Evidence Act. Even if PW4 was an accomplice. I am satisfied with the reasons given by the learned Sessions Court Judge for accepting PW4's statements. *Wong Kok Wah v. Public Prosecutor* [1955] MLJ 46. See Viscount Reading CJ. in *R v. Baskerville*

[1916] All ER 38. In our case the prosecution was not relying on circumstantial evidence as they had direct proof. *Rattan Singh v. Public Prosecutor* [1971] 1 MLJ 162.

The Sessions Court Judge gave sufficient weight to the evidence with knowledge and recognition of the dangers of an accomplice character and to the necessity for consideration. *Datuk Chang Hwee Min & Nasrah v. Public Prosecutor* (at Appendix "E" in the **Law of Bribery & Corruption in Malaysia**).

Mr. Sidney Augustin described PW4 as an unmitigated rogue whereas the Sessions Court Judge held PW4 in high esteem.

The main question is whether PW4 was a *participus criminis*. If I am asked the question, whether a witness alleging that he had given gratification to the accused under some compulsion is, *prima facie*, an accomplice, my answer is in the negative. See a different instance in *Ng Kok Lian & Anor v. Public Prosecutor* [1983] 2 MLJ 379 FC.

Delay in writing grounds of decision

Mr. Augustin and the learned Counsel for the two accused criticised the Sessions Court on various grounds including the learned Judge's failure to consider the defence and that the decision was not justifiable on the evidence available. It was also contended that the grounds of judgment on 6 January 1994 was "4 years after convicting" the accused.

Mr. T. Kuhanandan was of the opinion that the learned Judge had "forgotten the demeanour of the witness and the evidence adduced .... and would have solely relied on the notes of evidence."

Taking the matter of delay, *T.N. Nathan v. Public Prosecutor* [1978] 1 MLJ 134 was cited. In that case "the delay of another two years before receiving the grounds of decision was most unsatisfactory and has prejudiced the appellant". In that case, too, the grounds of decision dated July 20, 1974 were not supplied to Counsel until 2 July 1976 that is, nearly three years after the appellant's conviction.

I am indeed sorry that the situation has not improved between 1974 and 1994. This may be due to the absence of proper Court management or suitable disciplinary action. Some form of check-list, diary and accountability on each officer (Sessions Court Judge and Magistrate) should have been forthcoming to ensure the Subordinate Courts perform speedily and within reasonable time frames. Of course, where a Magistrate or Judge works himself to the bone and there is difficulty in fulfilling the quota of case disposal, we can sympathise. See Mr. John Ko's (the President of the Advocates Association of Sarawak) remarks in [1994] 1 CLJ. f. (February Part 1).

Practice Direction No: 5 of 1989 may be useful to remind all Courts not to waste time but rather usefully apply the Courts time to hearing cases productively. If this is adhered to then we may have more cases disposed of and subordinate Courts can spend time to write their judgments within a reasonable period not exceeding two months. I visited the Philippines recently and learned of their judges having given an undertaking to hear and dispose of all cases within two months and delivering the written grounds of decision within 45 days on completion of the trial. Our CPC at s. 173 envisages the speed at which summary trials by Magistrates (and Sessions) Courts ought to be completed.

In *T. N. Nathan's* the Judge doubted if the (then) learned President could have remembered the impression which witnesses made upon him. In our case, the question of impressions or demeanour of witnesses does not decide the outcome of the trial. See *Tengku Mahmood v. Public Prosecutor* [1974] MLJ 110. The Sessions Court Judge, in her adequately written

grounds (from page 207 to 217 of the appeal records) dealt with facts and explained how she decided several issues. There were no contradictions on material points (see *Nathans'* at page 135). She had also considered the defence in accordance with the expectation in *Vijaya Ratnam v. Public Prosecutor* [1962] 28 MLJ 106 although the petition of 2nd accused at para 2(f) claimed otherwise. As observed by Terrell Ag CJ in *Chia Han Kiat v. Rex* [1937] MLJ 248 " .... an appellate Court would in such circumstances be in an equally good position to weigh the evidence as the District (now Sessions) Judge himself" (or "herself" in our case today).

Samuel T. Ponampalam v. Public Prosecutor [1985] 2 CLJ 86 merely echoed *Nathan's* but added that the appellate Court was "in an equally good position to assess and weigh the facts adduced as the subordinate Court". I am in agreement with that though the conviction of Ponampalam was quashed on other grounds.

Of course, I must weigh if the delay in writing judgment can be fatal or may lead to injustice. See *Tan Hun Wah v. Public Prosecutor & Anor* [1994] 2 CLJ 180. In that case a conviction on s. 6 instead of s. 39B of the Dangerous Drugs Act was ordered. Law's delays can be intolerable or as Lord Denning MR in *Allen v. Sir Alfred Mcalpine & Sons Ltd.* [1968] 2 QB 229 said, "they have lasted so long as to turn justice sour". And the Federal Court in *Assunta Hospital v. Dr. A. Dutt* [1981] 1 MLJ 115 observed that "whatever the cause of the delay, whether it is for want of prosecution or any other cause, it occasions a failure of justice". This does not apply here because the prosecution was quite prompt in the trial. It was only the writing of the grounds which was delayed. Justice should be swift but that is not to say it should be rushed, per Hepworth J. in *Public Prosecutor v. Gurbachan Singh* [1964] 30 MLJ 141.

It is safe to say that all litigants and parties and a majority of Counsel expect our Courts to complete writing the grounds of decision/judgment early. In this particular case, on the record of appeal and after the submissions and arguments, I am unable to conclude that accused had been prejudiced or that there is any injustice.

Conclusion

On all these principles, and taking the appeal records into consideration after the submissions and arguments, I am able to, and I now dismiss the appeals and confirm the conviction of 1st appellant (Abdul Rahman) on both charges and of 2nd appellant (Ismail) on the first charge only.

Before I proceed to the sentence, I will now hear the DPP and Counsel in mitigation.

[Court records the proceedings].

I am of the opinion that where the Public Prosecutor considers the sentence to be inadequate, an appeal should be lodged under s. 316(b) of the Criminal Procedure Code. As no appeal was lodged, I have to consider the mitigation of the two appellants instead. Usually the appellate Court will not alter the sentences of the trial Court unless the sentences are manifestly wrong: *New Tuck Shen v. Public Prosecutor* [1982] 1 MLJ 27. *Balakrishnan v. Public Prosecutor* [1969] 2 MLJ 61.

Is it a sign of the times when we see policemen who are salaried and expected to guard citizens and residents go prowling around to collect bribes? I realise that "the policeman's lot is not a happy one" (WS. Gilbert: **The Pirates of Penzance**). But businessmen are already burdened by the dangers posed by gangsters who collect protection money. If the govern-

ment policy of friendship with the businessmen is to result in the higher collection of income tax, it is imperative that corruption be stamped out at all levels and in all corners.

Looking at past cases of corruption convictions, e.g. *Mahesan v. Public Proecutor* [1970] 1 MLJ 255 and *Mohamed Mokhtar v. Public Prosecutor* [1972] 1 MLJ 122, *Mohamed Taufik v. Public Prosecutor* [1975] 1 MLJ 36, I am of the opinion that Courts should avoid "punishment which amount to mere pin-pricks. They are merely annoying or irritating and do not correct or deter" per Shepherd J. in *Reg v. WN. Hammar* [1958] MLJ 4. But I must exercise moderation and a sense of proportion. *Yoh Meng Heng v. Public Prosecutor* [1970] 1 MLJ 14.

Having taken the above into account, I will now affirm the sentences passed by the learned Sessions Court Judge on the two charges for 1st accused and on 1st charge of the 2nd accused, both terms to commence from today.